

The Honorable Robert J. Bryan

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

CIVIL ACTION NO. 3:17-cv-05806-RJB

STATE OF WASHINGTON,

Plaintiff,

v.

THE GEO GROUP, INC.,

Defendant.

DECLARATION OF MARSHA CHIEN  
IN SUPPORT OF STATE OF  
WASHINGTON'S OPPOSITION TO  
GEO'S MOTION FOR IN CAMERA  
REVIEW AND TO ORDER THE  
STATE TO FILE GEO'S EXHIBIT 231  
IN NATIVE FORMAT WITHOUT  
FULL PAGE REDACTIONS FOR USE  
AT TRIAL

NOTE ON MOTION CALENDAR:  
September 25, 2020

Pursuant to 28 U.S.C. § 1746(2), I, Marsha Chien, state and declare as follows:

1. I am over eighteen years of age, have personal knowledge of and am competent to testify about the matters contained herein.

2. I am an Assistant Attorney General (AAG) for the Attorney General of Washington and together with other AAGs in the Civil Rights Division, I represent the State of Washington in this matter.

3. The Court's Motions in Limine Order incorporates by reference statements made during the April 13, 2020 pretrial hearing. ECF No. 374. A true and correct copy of the April 13, 2020 Pretrial Hearing transcript excerpts are attached as **Exhibit A**.

4. In the summer of 2017, I assisted another Civil Rights Division AAG, La Rond Baker, in drafting a memorandum analyzing legal claims and strategy relating to the enforcement of the Minimum Wage Act against GEO for work detainees perform at the Northwest Detention Center (NWDC).

5. We worked on the memo (hereinafter referred to as the "NWDC Memo") in consultation with AAGs who are assigned to represent Washington's Labor and Industries Department (L&I), including James Mills, Amanda Goss, Lionel Greaves, and Diana Cartwright. All of the AAGs involved are government attorneys. After it was completed, Ms. Baker provided the NWDC Memo to senior officials in the AGO for review in anticipation of litigation.

6. Additionally, Ms. Baker sent the final NWDC Memo to Tammy Fellin, an L&I employee. Since L&I also enforces the MWA, and she had been involved when the issue previously had been raised, she and others in L&I needed to understand the legal analysis supporting its authority to enforce the MWA at the NWDC for future cases and/or litigation. In sending it to Ms. Fellin, the NWDC Memo itself was marked "ATTORNEY-CLIENT PRIVILEGED", it was electronically saved as "Attorney Client Privileged," and the subject line of the transmission email also indicated that it was attorney-client privileged. A true and correct copy of that email is attached as **Exhibit B**.

7. On September 5, 2019, GEO deposed Joshua Grice, L&I Employment Standards Program Manager. During the deposition, Mr. Grice testified that the NWDC Memo provides legal advice as to how the MWA may apply at the NWDC and that L&I staff utilized that advice in 2018 when considering issues related to MWA enforcement at NWDC. A true and correct copy of excerpts of the Grice deposition transcript is attached as **Exhibit C**.

8. On April 26, 2019, Washington provided GEO with two privilege logs in response to GEO's discovery requests. The Attorney Client privilege log identified the NWDC Memo as privileged, as well as a series of email communications between Ms. Baker, Mr. Mills, Ms. Goss, Mr. Greaves, and Ms. Cartwright from August 2017 to September 2017. A true and correct copy of the email and Attorney Client privilege log is attached as **Exhibit D**.

9. Although GEO specifically asked Washington about the privilege logs and the NWDC Memo in May 2019 and filed a motion to compel additional discovery, including items identified on those privilege logs, GEO did not seek to compel the NWDC Memo or to challenge Washington's assertions of attorney-client privilege and work product at that time.

10. GEO did not challenge Washington's assertions of attorney-client privilege as to the NWDC Memo until January 17, 2020, more than six months after the close of discovery. GEO challenged the privilege designations in an attempt to dissuade Washington from seeking to compel relevant financial documents. Specifically, in response to Washington's request for an unredacted version of GEO's Letter to ICE seeking a request for equitable adjustment, GEO responded with an email that stated: "Please know that should the State file a motion seeking to unredact the letter to ICE, GEO will likewise move to unredact the [NWDC Memo]." A true and correct copy of the email is attached as **Exhibit E**.

I declare, under the penalty of perjury under the laws of the United States and the State of Washington, that the foregoing is true and correct.

Executed this 21st day of September 2020 in Seattle, Washington.

*s/ Marsha Chien*

MARSHA CHIEN, WSBA No. 47020  
Assistant Attorney General

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was electronically filed with the United States District Court using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated this 21st day of September 2020 in Seattle, Washington.



CAITILIN HALL  
Legal Assistant